

(2010) 03 CAL CK 0059

In the Calcutta High Court

Case No : M.A.T. 1079. of 2009, M.A.T. 1127 of 2009 with W.P. No. 7514 (W) of 2009

Shyama Charan Chakraborty

APPELLANT

Vs

Nandalal Chatterjee

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

West Bengal Town And Country (planning And Development) Act, 1979 — Section 13, 57, 58, 59, 60

Citation : (2010) 2 CALLT 162

Hon'ble Judges : Mohit S. Shah, C.J.; Pinaki Chandra Ghose, J

Bench : Division Bench

Advocate : Probal Mukherjee and Ms. Nabanita Ray Mukherjee, for the Appellant; Sandip Srimani, Ms. Suchitra Saha, Ms. Dipanwita Ghosh Chowdhury for the State, Mr. Kishore Datta, Mintu Goswami for Writ Petnr./Respdt., Mr. Abhrajit Mitra, Anirban Ray, Rajeev Yadav for Respondent No. 7, Mr. Raja Basu Chowdhury, Suman Datta and Mr. Sayantan Bose for Respondent No. 48 and 49, for the Respondent

Final Decision : Dismissed

Judgement

Mohit S. Shah, C.J. and Pinaki Chandra, J.

The Judgment of the Court was as follows:

1. Instead of hearing the stay application, with the consent of the learned Counsel for the parties we have taken the appeal itself for final disposal by treating the appeal as on day's list.
2. In view of the nature of controversy involved in the two appeals as well as the writ petition, with the consent of the learned Counsel for the parties we have taken up the writ petition as well by treating it as on day's list. Both the appeals with Writ Petition are being disposed of by this common judgment.
3. The appeals are directed against the interlocutory order dated 15th

September, 2009 of the learned single Judge in Writ Petition No. 7514 (W) of 2009 by which the learned single Judge restrained the Asansol-Durgapur Development Authority that no further construction be carried out in any of the areas marked green and designated as open space in the original site plan relating to Urvashi Complex.

4. The Asansol-Durgapur Development Authority (hereinafter referred to as ADDA) with the help and technical expertise of Bengal Ambuja Housing Development Ltd. (hereinafter referred to as BAHDL) proposed to develop a piece of land ad-measuring about 122.042 acres situated on the North of Durgapur City Centre for the purpose of meeting the housing demand in that area. The scheme for neighbourhood development primarily dealt with infrastructural development of residential plots along with other necessary amenities. The residential plots are of two types, i.e. individual plots of various sizes and plots for Group Housing. The scheme also includes construction of various types of dwelling units to suit the requirements of all sections of the population. The synopsis on the proposed project indicated various infrastructural development which would be made by the Asansol-Durgapur Development Authority jointly with Bengal Ambuja Housing Development Ltd. being construction of roads, water supply, power, drainage etc. The master plan of the scheme further gave details of land distribution pattern as under:

(a)Total Raw Land:

122.042 Acres.

(b)Developable land:

94.02 Acres.

(c)Road Circulation:

18.93 Acres.

(d)Open Spaces.:

5.84 Acres.

(e)TotalLand for BAHDL including Road & Circulation Amenities & facilities etc.:

64.93 Acres.

(f)Total Bulk Developed land for ADDA (excluding roads). :

29.09 Acres"

The details of Plot distribution in BAHDL's land were as under:

(a)Total plotted land:

38.0 Acres.

(b)No. of Housing Plots

(Individual +Group Housing)

628 Nos."

5. Thereafter, the writ petitioners entered into an agreement with the State Government and BAHDL under which each of the writ petitioners, 43 in number was allotted on lease basis land ad-measuring about 4 cottahs as per the separate lease deeds executed with each of the writ petitioners on 30th July 1999 and supplementary agreement on 27th May, 2000 the parties were to these lease deeds and agreements.

(i) the Governor of West Bengal represented by the concerned Officer of the Urban Development (Town & Country- Planning) Department of the Government of West Bengal (Lessor),

(ii) the writ petitioners (Lessee) and

(iii) BAHDL "the Company".

6. The agreement dated 30th July, 1999 and the Supplementary Agreement dated 27th May, 2000 provided that the lessor appointed the company as the developer of the land ad-measuring 122.042 acres to develop the land by laying the land of plot of various sizes (with or without buildings) to be used for housing, commercial or other purposes together with infrastructural and support facilities and services. The lease deed provided that the company shall develop the land in accordance with the terms of a Development Scheme by the Lessor. In pursuance of the provisional allotment letter granted by the company in favour of the Lessee and in consideration of Rs. 2,64,000/- only being proportionate land premium paid to the Lessor by the Company, a lease deed was executed. Some of the important terms of the said Lease are to be found in Clause (xxii) and Clause (xxvi) which read as under:

(xxii) The Lessee admits and accepts that the all common areas, services and facilities such as roads, water system, drainage, garbage disposal, landscape, sewerage treatment plant and sewerage system etc. in Malhar Complex Phase I shall remain the property of the Lessor who shall be solely responsible for their maintenance and management. The Lessor shall be entitled to transfer all-such facilities to Durgapur Municipal Corporation and in case of such transfer the said Durgapur Municipal Corporation shall be responsible for their maintenance and management. The Lessee hereby undertakes to pay proportionate charges for the maintenance of the common areas mentioned above to the Lessor or to the said Durgapur Municipal Corporation as the case may be, at such rates as may be fixed from time to time by the concerned Authority and the Lessee undertakes to pay all charges for supply of water and/or consumed by the Lessee as may be fixed by the concerned Authority.

(xxvi) Not to claim any share and/or interest and/or right of any nature whatsoever in the Malhar Complex Phase-I, "Chaya-Shri" Complex and the Commercial Centre, the extents whereof have been clearly demarcated on the

Plan annexed hereto marked "A" and which has been clearly understood and accepted by the Lessee.

The Second Schedule to the agreement gave particulars of the land leased, out to each of the writ petitioners ad-measuring 4 cottahs.

7. The writ petitioners moved the learned single Judge with a prayer to restrain the A.D.D.A from allotting any further plots on the ground that when the writ petitioners had entered into agreement with the Governor of West Bengal and B.A.H.D.C.L., certain plots were indicated in the master plan, but subsequently the master plan was revised without following the due procedure prescribed by the West Bengal Town and Country (Planning on Development) Act, 1979 and six more plots.

8. The learned single Judge while giving directions for filing affidavits, passed interim order restraining the A.D.D.A. that no further construction shall be carried out on any of the above plots on the ground that initially they were open spaces in the original site plan.

9. The A.D.D.A as well as the allottees of the six plots are in appeal before us. As far as the allottees are concerned in their appeal MAT No. 1079 of 2009 their learned Counsel has contended that the plots were allotted to them in May/June, 2009 and, thereafter, they started construction after taking loans from the banks. After allottees started construction of their dwelling units the writ petitioners obtained ad interim injunction causing irreparable loss and injury to the allottees who have to re-pay the loan instalments without being in position to utilize the plots.

10. The A.D.D.A has also challenged the impugned order of the learned single Judge in MAT No. 1127 of 2009 and then learned Counsel has submitted that the lease agreement between the State Government, B.A.H.D.C.L. and the writ petitioners did not confer any right on the writ petitioners to any land other than the plot of land mentioned in the Second Schedule and the facilities and amenities meant for that plot and the common facilities. It is submitted that the writ petitioners having paid the premium and the rent only for four cottahs of land allotted to each of the writ petitioners, the writ petitioners had no right to restrain the authority from allotting other lands. It is also submitted that two out of six plots were required to be allotted to parties who were originally allotted some other plots, but on account of certain difficulties they were not in a position to utilize those plots. It is also submitted that even when the writ petitioners entered into lease agreements with the State Government and B.A.H.D.C.L., what was mentioned as the areas earmarked as open space were 5.84 acres, but in the revised master plan the authority has shown 13.28 acres as open space as indicated in the chart set "out hereinabove. It is, therefore, submitted that no prejudice has been caused to the appellants and in any view of the matter they had no right to any land other than the land for which the lease agreement was entered into with the writ petitioners.

11. Learned Counsel for the writ petitioners has submitted that whatever change the development authority had to make to the original development scheme, no such change could have been made without following the procedure prescribed in Sections 57 to 61 of the West Bengal Town and Country (Planning and Development) Act, 1979 (hereinafter referred to as the said Act) and the provisions of Sections 84 and 85 of the said Act.

12. In reply, the learned Counsel for the development authority points out that the provisions of the above Act are not applicable to the master plan prepared jointly by the A.D.D.A. and the B.A.H.D.L. The provisions of the said Act relating to development scheme are applicable to the lands which remained with the concerned owners or parties and the development scheme under the Act contemplates the division of those different lands into zones etc. As far as the lands in question are concerned, they belonged to the State Government and the State Government has made arrangements with A.D.D.A. and the B.A.H.D.L. for catering to the housing needs of the people.

13. Having heard the learned Counsel for the parties, this Court finds considerable substance in the submissions made on behalf of the appellants that the master plan which is called "development scheme" in the agreement is not "the development scheme" as contemplated by Chapters VIII and IX of the West Bengal Town and Country (Planning and Development) Act, 1979. Whatever variation had been made, the area of open space has increased from 5.84 acres to 13.128 acres as set out in the following chart which is a part of the revised master plan and, therefore, there is no prejudice to the allottees of land..

DESCRIPTION

AREA IN ACRE

%

1. TOTAL GROSS AREA

119.514

100.00

2. ROAD & CIRCULATION

21.930

18.35

3. AMMINITIES

0.545

0.46

(a) O.H.W.T (0.2032)

(b) 5 NO. SUB STATION (0.2940)

(c) GARBAGE ROOM (0.0479)

4. ORGANISED OPEN SPACE

23.709

19.84

(a) POND AREA (8.645)

(b) KALI BARI (0.72)

(c) PLAY AREA (1.216)

(d) OPEN SPACES (13.128)

(INCLUDING H.T. CORRIDOR 7.381 ACRES)

5. RESIDENTIAL AREA (BAHDL)

41.59

34.80

(a) PLOTS (39.198)

(b) CHHAYA-SHRI APTT. (2.392)

6. COMMERCIAL AREA (BAHDL)

2.932

2.45

7. ADDA'S BULKLAND

28.808

24.10

14. As regards the contention of the learned Counsel for the writ petitioners that the Act has not empowered the development authority to enter into any such agreement, we, do not find any substance in the contention because Section 13 of the Act confers the following powers and functions on the development authority as provided in Section 13(I)(ii) which reads as under:

13(1)(ii) a Development Authority shall have the following powers and functions:

(a) to prepare a present Land Use Map;

(b) to prepare and enforce (a Land Use and Development Control Plan)

(c)

(d) prescribe use of land within its area;

- (e) to prepare and execute development schemes;
- (f) to co-ordinate development activities of all departments and agencies of the State Government or local authorities operating within the Planning Area;
- (g) to carry out or cause to be carried out such works as are contemplated in the (Land Use and Development Control Plans);
- (h) to acquire, hold and manage such property, both movable and immovable, as the Development Authority may deem necessary for the purposes of any of its activities and to lease, sell, or otherwise transfer any property held by it;
- (i) to purchase by agreement or to take on lease or under any form of tenancy, any land and to erect thereon such buildings and to carry out such operations as may be necessary for the purpose of carrying on its undertakings;
- (j) to enter into or perform such contracts as may be necessary for the performance of its duties and for exercise of its powers under this Act;
- (k) to provide facilities for the consignment, storage and delivery of goods;
- (l) to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribed.

(emphasis supplied)

15. A perusal of the above statutory powers and functions of the Development Authority clearly indicate that the Development Authority has the power to acquire, hold and manage properties and to lease sell or otherwise transfer any property held by it. The authority is also empowered to enter into or perform such contacts as may be necessary for the performance of its duties and for exercise of its powers and to perform any other function which may be supplemental, incidental or consequential to any of the functions of the Development Authority.

16. In G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, the Apex Court has held that a project, otherwise legal does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. The criticism of the project being "unconventional" does not add or to advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. Though there is a degree of public accountability in all governmental enterprises, but the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of Government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down improved management methods prevention of time and cost overruns in projects balancing of costs against time

scales, quality control, cost-benefit ratios etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. These are essential matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial or error, as long as both trial and error are bonafide and within the limits of the authority. In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. Therefore, in the context of expanding exigencies of urban planning it will be difficult for the Court to say that a particular policy option was better than another. The contention that the project is ultra vires the powers of the Municipal Council is not acceptable.

17. In view of the aforesaid statutory provisions and the principles enunciated by the Apex Court in G.B. Mahajan's case (supra), we have no hesitation in holding that the master plan prepared by the Development Authority with the Bengal Ambuja Housing Development Ltd, was within the powers of development authority and that it is not the development scheme as contemplated by Chapters VIII and IX of the Act. Hence for making variation in the master plan it was not necessary for the development authority or the State Government to follow the procedure prescribed in Chapter VIII or IX of the Act.

18. For the reasons aforesaid, we are of the view that the writ petition itself, deserves to be dismissed. Therefore, there was no question of passing any interlocutory order against the appellants. In the result, the appeal is allowed. The impugned order dated 15th September, 2009 of the learned single Judge is set aside and the writ petition is also dismissed.

The connected applications in the appeals are also disposed of as infructuous.

19. The writ petitioners shall pay costs to the respondents which are quantified at Rs. 10,000/- for Asansol Durgapur Development Authority, and Rs. 10,000/- the appellants in MAT No. 1079 of 2009 in one set and Rs. 5000/-for the State. The costs shall be paid within one month from date.

20. At this stage the learned Counsel for the petitioners prays for stay, the request is rejected.